

**IN THE SUPREME COURT
STATE OF MISSOURI**

IN RE:)
)
JOHN ALLAN,) **Supreme Court #SC92497**
)
Respondent.)

INFORMANT'S BRIEF

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STATEMENT OF JURISDICTION

This action is one in which Informant, the Chief Disciplinary Counsel, is seeking to discipline an attorney licensed in the State of Missouri for violations of the Missouri Rules of Professional Conduct. Jurisdiction over attorney discipline matters is established by this Court's inherent authority to regulate the practice of law, Supreme Court Rule 5, this Court's common law and Section 484.040 R.S.Mo. 2000.

STATEMENT OF FACTS

Background and Disciplinary History

Respondent John Allan has been licensed to practice law in Missouri for thirty-seven years. App. 21, 285. Respondent has been the subject of prior discipline, to wit:

- In December of 1992 Respondent received and accepted an admonition for violating Missouri Supreme Court Rules 4-1.1 (Competence), 4-1.3 (Diligence) and 4-7.1(b) (Misleading communications about a lawyer's services). The basis of the admonition was that Respondent, in representing his client in a bankruptcy matter, failed to properly address certain issues that resulted in the loss of his client's home and that Respondent improperly advertised that he would provide a free consultation. App. 272-273.
- In February of 1994 Respondent received and accepted three admonitions for violating Rules 4-5.5(b) (Unauthorized practice of law) and 4-8.4(d) (Conduct prejudicial to the administration of justice). These admonitions arose out of three complaints filed as a result of Respondent's permitting a non-lawyer to "represent" clients at depositions when he knew the lawyer was not a licensed attorney. App. 272, 274-276.
- In April of 2000 Respondent again received and accepted an admonition, this time for violation of Rules 4-1.3 (Diligence) and 4-1.4 (Communication) for failing to pursue a settlement in a client's case and failing to appropriately communicate with his client. App. 272, 277-278.

- In January of 2008 Respondent received and accepted an admonition for violation of Rule 4-1.3 (Diligence) arising out of his representation of a client in a legal malpractice matter. App. 272, 279-280.
- The Missouri Supreme Court on May 11, 2007 ordered Respondent reprimanded for violation of Rules 4-1.3 (Diligence) and 4-1.4 (Communication). App. 272, 281-282.
- On November 23, 2009, the Missouri Supreme Court entered its Order finding a violation by Respondent of Rules 4-1.3 (Diligence) and 4-1.4 (Communication) and suspended Respondent from the practice of law, with the suspension stayed and Respondent placed on probation for a period of one year following the date of the Order. App. 272, 283-284. Respondent completed probation on March 18, 2011.

Respondent's Filing of a False and Misleading Affidavit

On December, 27, 2005, Respondent filed a wrongful death petition in the Circuit Court of Phelps County, Missouri, on behalf of his clients Lanny Camden, Roger Camden and Rebecca Camden Warren, the three surviving children of Winford Camden. The action, styled Camden v. Frederic Hamly, MD et. al, Cause No. 25V03052000C, was filed against three doctors; Frederick Hamly, Delane Weinch and Richard Mathews and asserted that each caused, or contributed to cause, Winford Camden's death (the "2005 Lawsuit"). App. 23-27, 152-158. In July 2006, Respondent filed an affidavit required by Mo. Rev.Stat. §538.225, after having received permission from the court to file it late (the "Affidavit"). App. 28, 160-161.

Missouri Revised Statute §538.225, provides that in any action filed against a health care provider alleging injury or death, the plaintiff or plaintiff's attorney must file an affidavit with the court confirming that he or she has obtained a written opinion of a "legally qualified health care provider" stating that the defendant failed to satisfy the reasonable standard of care and that such resulted in injury or death. Under that statute, a "legally qualified health care provider" is defined as "...a health care provider licensed in this state or any other state in the same profession as the defendant and either actively practicing or within five years of retirement from actively practicing substantially the same specialty as the defendant." App. 26-28, 159.

The Affidavit prepared, signed and filed with the trial court by Respondent in the 2005 Lawsuit, provided, in pertinent part:

"...the attorney [Respondent] has *obtained the written opinion* of a legally qualified health care provider which states that the following defendant health care providers, Dr. Richard Mathews and The Bond Clinic and Joseph Bond M.D. failed to use such care as a reasonably prudent and careful health care provider would have under similar circumstances and that such failure to use such reasonable care directly caused or directly contributed to cause the damages claimed in the petition." (*emphasis added*) App. 160-161.

The Affidavit listed three doctors who had allegedly provided such a written opinion, Dr. Glennon Schaefer, a general surgeon, Dr. Roland Kohr, incorrectly identified in the Affidavit as an oncologist but in actuality a pathologist, and Dr. Thomas Schmitz, identified as a "...radiologic oncologist in active practice and in substantially

the same specialty as the defendant, Matthews.” Dr. Schmitz was the only health care provider listed by Respondent in the Affidavit practicing in the same specialty, radiologic oncology, as Dr. Matthews. Id.

It is undisputed that in July of 2006 at the time Respondent filed the Affidavit with the Court, Respondent had not obtained a written opinion from Dr. Schmitz. Respondent admits that the Affidavit was false and a “very misleading affidavit”. App. 29, 38. Respondent admits that at the time he filed the Affidavit he knew Dr. Schmitz did not have an opinion concerning the standard of care of Dr. Matthews treatment. App. 31-32, 37-38. In a pleading filed with the trial court in October 2008, Respondent stated that he could only conclude that he “knowingly filed a false affidavit”. App. 47, 163. Respondent, while not admitting that his conduct violated any ethical rules, admits that the false affidavit caused delay in the litigation and resulted in prejudice to his clients. App. 22-23.

On November 9, 2007, fifteen months after the false Affidavit was filed, the attorneys representing the parties in the 2005 Lawsuit traveled to Indiana to depose Dr. Schmitz. During the deposition, in response to questioning from Brian Malkmus, the attorney representing Dr. Matthews, Dr. Schmitz testified that he had never given Respondent a written opinion about whether Dr. Matthews’ actions failed to satisfy the appropriate standard of care for his treatment of Winford Camden. App. 32, 181-183. In fact, Dr. Schmitz testified that he was unable to form an opinion on negligence because he still had not received the x-ray films which were necessary for him to review prior to forming any opinion. The x-rays that Dr. Schmitz needed to review were the x-rays

related to Winford Camden's treatment from 1997 and were available, but had not been provided by Respondent to Dr. Schmitz, prior to either the filing of the Affidavit or Dr. Schmitz's deposition. App. 32, 47-48.

Prior to offering Dr. Schmitz as a deposition expert witness in the 2005 Lawsuit, Respondent had not questioned him regarding whether he had an opinion on the standard of care provided by Dr. Matthews based upon a reasonable degree of medical certainty. App. 36-37. As a result, Respondent did not learn that Dr. Schmitz had not formed an opinion regarding Dr. Matthews' standard of care until just before Dr. Schmitz's deposition was taken. Respondent, instead of continuing the deposition, admits he made a "very bad" decision to allow Dr. Schmitz to testify at his deposition that he had never given Respondent or his client any opinion about whether Dr. Matthews treatment of Winford Camden failed to meet the standard of care or contributed to Mr. Camden's death. App. 32-35, 74-75.

At no time did Respondent file any pleading or otherwise attempt to notify the court in an effort to correct the false and misleading Affidavit he had filed in July 2006. App. 40, 44. Subsequent to Dr. Schmitz's deposition, Respondent did provide Dr. Schmitz with the x-rays from Winford Camden's treatment and Dr. Schmitz was able to give Respondent a written opinion. App. 41. In March 2008, counsel for Dr. Matthews filed a Motion to Dismiss the 2005 Lawsuit on the basis that Respondent had filed a false affidavit. Prior to the court's ruling on the Motion to Dismiss, Respondent voluntarily dismissed the 2005 Lawsuit. App. 40-41. Respondent subsequently re-filed the same cause of action with the Circuit Court for Phelps County, Missouri, styled Camden v.

Frederick Hamily, M.D., et. al, Cause No. 08PH-CV00762 (the “2008 Lawsuit”).

Respondent also re-filed the Affidavit in support of the 2008 Lawsuit. App. 44.

On August 28, 2008, counsel for Dr. Matthews filed a “Motion for Sanctions under 55.03(f)” requesting that the trial court dismiss with prejudice the 2008 Lawsuit based upon Respondent’s filing of the fraudulent Affidavit in the 2005 lawsuit. App. 254-260. On February 10, 2009, the court granted the Motion for Sanctions and entered its dismissal with prejudice of the 2008 Lawsuit and entered sanctions against Respondent in the amount of \$1000. App. 45, 81.

Respondent appealed the trial court’s dismissal of the 2008 Lawsuit and award of sanctions. In 2010, the Court of Appeals for the Southern District of Missouri reversed the trial court’s dismissal and remanded the 2008 Lawsuit back to the Circuit Court to consider appropriate sanctions against Respondent. App. 45. *See also Lanny Camden, et. Al v. Frederick Hamley, M.D. et. al*, 306 S.W.3d 680 (S.D. Mo. 2010). The trial court, in accordance with the Order of the Court of Appeals, reinstated the 2008 Lawsuit and entered sanctions against Respondent in an amount in excess of \$62,000. App. 45-46. That sanction has not been paid by Respondent. App. 46.

The claims in the 2008 Lawsuit against Dr. Matthews were ultimately dismissed by Respondent’s clients. Respondent admits that his clients had a viable cause of action against Dr. Matthews but were caused to dismiss those claims because of the false Affidavit filed by Respondent as well as the expense of proceeding further in the litigation. App. 46-47.

Although the claims against his client were ultimately dismissed, counsel for Dr. Matthews testified that had the Affidavit been accurate as of the date filed, July 2006, he would have been afforded the opportunity to seek to dismiss Respondent's client's claims against Dr. Matthews because of the absence of a written opinion of any negligence of Dr. Matthews from a health care provider in the same specialty as Dr. Matthews. App. 183-184, 254-259. As a result of the false Affidavit, Dr. Matthews and his counsel were denied the opportunity to seek the earlier dismissal of the cause of action.

DHP Hearing and Decision

The Disciplinary Hearing Panel ("DHP") held its hearing in regard to this matter on January 12, 2012. App. 288. Based upon the evidence presented at the hearing the DHP concluded that Respondent violated Rule 4-1.3 (Diligence) as a result of not being prepared for Dr. Schmitz's deposition and not understanding the requirements of Mo. Rev. Stat. §538.225. The DHP also found Respondent violated Rule 4-3.3(a)(1) and 3.3(a)(3) (Candor toward the tribunal) as a result of knowingly filing a false affidavit with the court and failing to correct it with the court; Rule 4-4.1 (Truthfulness in statements to others) and Rule 4-8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation) as a result of Respondent's filing of a false and misleading affidavit. Based upon its findings of fact and conclusions of law, the DHP recommended that Respondent be suspended for six months from the practice of law, with such suspension to be stayed and Respondent placed on probation for one year. App. 288-305.

Pursuant to Rule 5.19, Informant timely rejected the Panel's recommendation. On April 23, 2012, Informant filed the record in this case.

POINTS RELIED ON

I.

RESPONDENT VIOLATED THE RULES OF PROFESSIONAL CONDUCT BY: (A) KNOWINGLY FILING A FALSE AFFIDAVIT AND SUBSEQUENTLY FAILING TO CORRECT THE FALSE AFFIDAVIT WITH THE COURT IN VIOLATION OF RULES 4-3.3(A)(1) AND (3), 4-4.1, 4-8.4(C) AND (D) OF THE RULES OF PROFESSIONAL CONDUCT; AND (B) FAILING TO BE DILIGENT IN PROPERLY PREPARING HIS EXPERT WITNESS FOR DEPOSITION TESTIMONY INCLUDING PROVIDING THE WITNESS WITH THE MATERIAL NEEDED TO FORM A MEDICAL OPINION AND INTERVIEWING AND UNDERSTANDING THE OPINION OF HIS EXPERT WITNESS PRIOR TO THE DATE OF HIS DEPOSITION IN VIOLATION OF RULE 4-1.3 OF THE RULES OF PROFESSIONAL CONDUCT.

Rule 4-1.3

Rule 4-3.3 (a)(1) and (3)

Rule 4-8.4(c) and (d)

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

POINTS RELIED ON

II.

THE COURT SHOULD SUSPEND RESPONDENT'S LICENSE BECAUSE: (A) CONSISTENT WITH THE SYSTEM OF PROGRESSIVE DISCIPLINE ADOPTED BY THIS COURT AND THE ABA SANCTION STANDARDS A SUSPENSION WITHOUT PROBATION IS APPROPRIATE WHERE RESPONDENT HAS PREVIOUSLY RECEIVED SIX ADMONITIONS, A REPRIMAND AND A STAYED SUSPENSION WITH A PROBATIONARY PERIOD; AND (B) THE EGREGIOUS NATURE OF RESPONDENT'S CONDUCT IN KNOWINGLY FILING A FALSE AND MISLEADING AFFIDAVIT WITH THE COURT AND FAILING TO TAKE ANY ACTION TO CORRECT THE FALSE AFFIDAVIT BEFORE THE COURT.

ABA Standards for Imposing Lawyer Sanctions (1991 ed.)

In re Storment, 873 S.W.2d 227 (Mo. banc 1994)

In re Caranchini, 956 S.W.2d 910 (Mo. banc 1997)

In re Crews, 159 S.W.2d 355 (Mo. banc 2005)

ARGUMENT

I.

RESPONDENT VIOLATED THE RULES OF PROFESSIONAL CONDUCT BY:

(A) KNOWINGLY FILING A FALSE AFFIDAVIT AND SUBSEQUENTLY FAILING TO CORRECT THE FALSE AFFIDAVIT WITH THE COURT IN VIOLATION OF RULES 4-3.3(A)(1) AND (3), 4-4.1, 4-8.4(C) AND (D) OF THE RULES OF PROFESSIONAL CONDUCT; AND

(B) FAILING TO BE DILIGENT IN PROPERLY PREPARING HIS EXPERT WITNESS FOR DEPOSITION TESTIMONY INCLUDING PROVIDING THE WITNESS WITH THE MATERIAL NEEDED TO FORM AN OPINION AND INTERVIEWING AND UNDERSTANDING THE OPINION OF HIS EXPERT WITNESS PRIOR TO THE DATE OF HIS DEPOSITION IN VIOLATION OF RULE 4-1.3 OF THE RULES OF PROFESSIONAL CONDUCT.

A. Respondent knowingly filed a false affidavit with the Court

It is undisputed that the Affidavit prepared, signed and filed by Respondent with the Court in July of 2006 was not truthful and was misleading. Indeed, Respondent admitted in a pleading filed with the Court in October of 2008 that he could “only conclude that I knowingly filed a false affidavit.” App. 162-164. At

the time Respondent filed the affidavit with the Court stating that he had obtained a written opinion from Dr. Schmitz, Respondent did not have such a written opinion and knew he did not have such a written opinion. ¹ App. 31-32, 37-38.

In November 2007, at the deposition of Dr. Thomas Schmitz, the false nature of the affidavit first came to light to opposing counsel and was highlighted as an issue in the 2005 Lawsuit. However, at no time from the filing of the false affidavit in July 2006, to Dr. Matthew's attorneys filing a Motion to Dismiss in March 2008, did Respondent take any actions to correct the false Affidavit filed with the Court. App. 40, 44.

As a result of the false Affidavit, the 2005 Lawsuit was dismissed by Respondent and a new action was subsequently re-filed, the 2008 Lawsuit was dismissed, the dismissal was appealed and the action was reinstated with sanctions being assessed against Respondent. Ultimately, because of the false Affidavit, Respondent's clients were caused to voluntarily dismiss their action against Dr.

¹ Contrary to his representations before the trial court, at the DHP hearing Respondent argued that he did not knowingly file a false affidavit because he did not *intend* to deceive the Court or opposing counsel. Respondent's argument in this regard misconstrues the definition of "knowledge" as applied to these proceedings. The ABA Standards defines "knowledge" as the "conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result." (See ABA Standards, Section III, Black Letter Rules).

Matthews, in spite of Respondent's belief that his clients had a viable cause of action against Dr. Matthews.

B. Respondent's actions violated Rule 4-3.3(a)(1) and (3)

Respondent's filing of the false Affidavit with the Court asserting that he had obtained the written opinion of Dr. Schmitz establishes that Respondent knowingly made "a false statement of fact or law to a tribunal" and offered "evidence that the lawyer knows to be false" in violation of Rule 4-3.3(a) (1) and (3). Further, Respondent's failure to take any steps to correct the false Affidavit after it was filed, shows that Respondent knowingly "fail[ed] to correct a false statement of material fact...previously made to the tribunal by the lawyer" and, failed to "take reasonable remedial measures, including if necessary, disclosure to the tribunal", all as required by Rule 4-3.3(a)(1) and (3).

C. Respondent's actions violated Rule 4-4.1

Rule 4-4.1 (Truthfulness in statements to others) provides that a lawyer shall not knowingly make a false statement of material fact to a third person. Respondent represented to the trial court and opposing counsel in the 2005 Lawsuit that he had obtained a written opinion from Dr. Schmitz regarding the negligence of Dr. Matthews. It is undisputed that the representation was false and misleading when it was made. While Respondent now asserts that he did not "knowingly" file a false affidavit, at the time the false affidavit was being litigated before the Phelps County Circuit Court, Respondent admitted he had knowingly filed the false affidavit and the DHP found such as well. Whether Respondent had

obtained the written opinion of a radiologic oncologist in support of a cause of action against a radiologic oncologist is a material fact to show compliance with the statutory provisions set forth in Mo. Rev.Stat. §538.225. Accordingly, Respondent's conduct violates Rule 4-4.1.

D. Respondent's actions violate Rules 4-8.4(c) and (d)

Rule 8.4(c) provides that it is professional misconduct to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation. Respondent admits he filed a false, misleading Affidavit with the trial court. Such conduct violates Rule 8.4(c).

As a result of his filing of the false Affidavit, the litigation was delayed while the parties, the trial court and the Court of Appeals addressed the issue. Ultimately, Respondent's clients voluntarily dismissed their lawsuit. Respondent admits his clients were prejudiced as a result of his filing the Affidavit. App. 22-23, 46-47. Dr. Matthews and his counsel were also prejudiced by the false Affidavit because it misled them to believe that Respondent had satisfied the requirements of Mo.Rev.Stat. §538.225 and denied them the opportunity to seek dismissal in July of 2006 of the cause of action filed against Dr. Matthews. App. 183-184, 254-259. Accordingly, Respondent's conduct in filing a false Affidavit was "prejudicial to the administration of justice" in violation of Rule 8.4(d).

E. Respondent did not act with reasonable diligence

The deposition of Dr. Schmitz was held in November 2007. Respondent had previously identified Dr. Schmitz as his medical expert witness who could

establish the negligence of Dr. Matthews and a causal relationship between that negligence and the death of Winford Camden. Prior to that deposition however, Respondent had failed to provide Dr. Schmitz with the x-rays of Winford Camden needed by Dr. Schmitz to form a medical opinion regarding the standard of care he received and causation. Further Respondent had failed to sufficiently and properly question Dr. Schmitz regarding his medical opinion and as a result Respondent discovered that Dr. Schmitz was unable to render such an opinion shortly before the time of the deposition. Further, Respondent failed to timely correct with the trial court the false Affidavit he had prepared, signed and filed.

Respondent's acts and omissions establish that he did not act with "reasonable diligence and promptness in representing a client" by failing to prepare his expert witness for his deposition, failing to provide the witness with available records needed for the witness to form a medical opinion, failing to understand the requirements of the statute requiring the submission of an affidavit in a cause of action against a health care provider and failing to timely correct the false Affidavit with the trial court. This lack of diligence by Respondent and the resultant unreasonable delay in the trial court proceedings violates the requirements of Rule 4-1.3.

ARGUMENT

II.

IN CONSIDERATION OF RESPONDENT'S PRIOR DISCIPLINARY RECORD, AND IN ORDER TO PROTECT THE PUBLIC, THE SUPREME COURT SHOULD SUSPEND RESPONDENT'S LICENSE BECAUSE: (A) CONSISTENT WITH A PROGRESSIVE DISCIPLINARY SCHEME AS ADOPTED BY THIS COURT AND ABA SANCTION STANDARDS A SUSPENSION WITHOUT PROBATION IS APPROPRIATE UNDER THE INSTANT CIRCUMSTANCE WHERE RESPONDENT HAS PREVIOUSLY RECEIVED SIX ADMONITIONS, A REPRIMAND AND A STAYED SUSPENSION WITH A PROBATIONARY PERIOD; AND (B) THE EGREGIOUS NATURE OF RESPONDENT'S KNOWINGLY FILING A FALSE AND MISLEADING AFFIDAVIT WITH THE COURT AND FAILING TO TAKE ANY ACTION TO CORRECT THE FALSE AFFIDAVIT BEFORE THE COURT.

This Court has relied on the American Bar Association's Standards for Imposing Lawyer Sanctions ("ABA Standards") to determine the appropriate discipline to be imposed in attorney discipline cases. *See, e.g., In re Crews*, 159 S.W.3d 355, 360-61 (Mo. banc 2005); *In re Griffey*, 873 S.W.2d 600 (Mo. banc 1994); *In re Oberhellman*, 873 S.W.2d 851 (Mo. banc 1994).

According to ABA Standards, suspension is appropriate when a lawyer “knows that false statements or documents are being submitted to the court...and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.” (Section 6.12 of the ABA Standards). See also, *In re Storment*, 873 S.W.2d 227, 231 (Mo. banc 1994); *In re Ver Dught*, 825 S.W.2d 847, 850-51 (Mo. banc 1992).

Respondent has an extensive history of prior discipline. Since 2008 Respondent has received a letter of admonition for violating Rule 4-1.3 (Diligence), a reprimand from the Missouri Supreme Court for violating Rule 4-1.3 (Diligence) and 4-1.4 (Communication) and an Order of suspension, stayed with a one year probationary period, for violating Rule 4-1.3 (Diligence) and 4-1.4 (Communication). Prior to 2008 Respondent had received five letters of admonition.

In this case, Respondent admittedly filed a false and misleading Affidavit with the trial court and subsequently took no actions to correct the Affidavit, even after it had been discovered by opposing counsel. This conduct by Respondent is contrary to a core obligation of a lawyer to his client, the public and the legal system. This Court has emphatically recognized this obligation, stating that it is a “...fundamental and indispensable principle that a lawyer must proceed with absolute candor towards the tribunal. In the absence of that candor, the legal

system cannot properly function.” *In re Caranchini*, 956 S.W.2d 910, 919-20 (Mo. banc 1997).

The DHP found that Respondent had violated Rule 4-1.3 (Diligence), 4-3.3(a)(1) and (3) (Candor to the tribunal), 4-4.1 (Truthfulness in statements to others) and 4-8.4(c)(Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation). In spite of the numerous violations found, and Respondent’s extensive disciplinary history, the DHP recommended a six month stayed suspension with a probation period of one year. The Panel’s recommendation fails to properly assess the serious nature of the professional misconduct in this case and is inconsistent with a system of progressive discipline followed by this Court and the ABA Standards. *In re Ehler*, 319 S.W.3d 442 (Mo. banc 2010). This is particularly true where one of the violations found by the Panel, Rule 4-1.3, was the same rule violation for which Respondent has previously been admonished, reprimanded and received a stayed suspension with probation.

The ABA Standards provide that after misconduct has been established, aggravating and mitigating circumstances may be considered in determining an appropriate sanction. Respondent’s prior disciplinary offenses, his pattern of misconduct, multiple offenses and Respondent’s substantial experience in the practice of law could be considered aggravating factors. Section 9.22 of the ABA Standards. A mitigating factor to be considered could be Respondent’s cooperative attitude toward the disciplinary proceedings. Section 9.32 of the ABA Standards.

Respondent's misconduct constitutes violations of duties owed to his clients and duties owed to the profession. The fundamental purpose of an attorney disciplinary proceeding is to "protect the public and maintain the integrity of the legal profession." *In re Crews*, 159 S.W.3d 355, 360 (Mo. banc 2005). Given the totality of the violations, as well as the aggravating and mitigating circumstances, and in recognition of a progressive disciplinary system, an indefinite suspension, with leave to reapply in one year, is the appropriate sanction.

CONCLUSION

Respondent committed professional misconduct by knowingly filing a false and misleading affidavit with the trial court and failing to timely remedy the affidavit, in violation of Rules 4-3.3(a)(1) and (3) (Candor toward the tribunal); 4-4.1 (Truthfulness in statements to others); and 4-8.4 (c) and (d) (Misconduct). Respondent's failure to be prepared for the deposition of his medical expert witness, failure to understand the obligations of Mo.Rev.Stat. §538.225 and failure to timely correct the false affidavit violate Rule 4-1.3 (Diligence).

The referenced violations, Respondent's prior disciplinary history, and the presence of aggravating circumstances and mitigating circumstances, support the imposition of discipline as described herein. Accordingly, Informant respectfully requests that this Court indefinitely suspend Respondent from the practice of law with no leave to apply for reinstatement for one year.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of May, 2012, two copies of Informant's Brief have been sent via First Class mail and through the Missouri Supreme Court e-filing system to:

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CERTIFICATION: RULE 84.06(c)

I certify to the best of my knowledge, information and belief, that this brief:

1. Includes the information required by Rule 55.03;
2. Complies with the limitations contained in Rule 84.06(b);
3. Contains 4,368 words, according to Microsoft Word, which is the word processing system used to prepare this brief; and
4. That Norton Anti-Virus software was used to scan the disk for viruses and that it is virus free.



Barry J. Klinckhardt

APPENDIX

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